

**Principal Deputy Under Secretary of Defense (Policy) James M. Bodner**  
**Testimony before the Senate Committee on Commerce, Science and Transportation**

**April 4, 2000**

Mr Chairman, Members of the Committee, good afternoon. I appreciate the opportunity to appear before this committee today to discuss the Export Administration Act.

The Department of Defense views the passage of an Export Administration Act (EAA) as important, and we hope will it be accomplished as early as possible in this session of Congress. Although there is a good deal that we are able to do within the present regulatory framework -- which is based on the provisions of the lapsed EAA carried forward by Executive Order -- we believe that the time has come to update that framework and provide us with the tools that we need to do the job more effectively. We are very interested in working with this committee and others in the Congress to produce the best possible legislation.

There are several critical elements which I believe must be kept in mind in consideration of an Export Administration Act. First, we need a strong policy basis in the law that recognizes U.S. security interests as the primary underpinning for U.S. export controls. Second, in order for controls to be effective in protecting and promoting our national security objectives, it is essential that the underlying authority provide substantial flexibility in both establishing and implementing controls. As members of this committee most particularly can appreciate, the increasing pace of change in technology and the economic and security environment requires a system that can adapt quickly to changing needs and circumstances. Third, while controls are considerably more effective if they are implemented on a multilateral basis the law needs to maintain a sufficiently broad basis for imposing unilateral controls when necessary. There are circumstances where the U.S. must take unilateral action.

Working closely with other USG agencies, most importantly the Departments of State and Commerce, DoD's role in U.S. government export control policy and implementation focuses primarily on two closely-linked objectives: 1) slowing -- and, where possible, countering -- the proliferation of weapons of mass destruction (nuclear, chemical, biological) and their means of delivery, and 2) preventing and slowing the spread of products, commodities and technologies which can adversely affect U.S. national security, particularly where there could be a resultant loss of superior military capabilities.

We recognize, however, that our approach on controls must balance those objectives with a number of other national security objectives, including close cooperation with allies and friends.

Preserving our military technological advantage involves not only limiting the acquisition of critical

technology by potential adversaries, but also promoting a vibrant, innovative private sector that supports defense research, development and production. Our national security is thus enhanced by ensuring U.S. industry can engage in legitimate international trade and investment. It is also enhanced by our scientists, engineers and other researchers being able to collaborate with their counterparts around the world. This has always been the case, but in an era in which we must rely increasingly on commercial products, technologies and processes to sustain and improve military capabilities it is all the more important that our industry be able to compete effectively in world markets for sales, talent and capital.

We also recognize that allied and coalition operations, of increased importance to us and to our allies, require a high degree of interoperability. This means sharing information, transferring technology (both from us and to us) and cooperating in R & D, production and testing. It also means, increasingly, that we consider defense contractors in allied countries as assets alongside as our own defense contractors. We find, however, that it is ever more difficult to convince other nations that we are serious in our efforts to improve defense capabilities in NATO (and in other contexts) when our allies are questioning the reliability of the US as a supplier. To achieve interoperability with our allies and enhance cooperation more broadly, we are working to modernize our export control procedures, as well as improve our approaches to disclosure processes, defense industrial base and FMS procedural reforms. We believe that an Export Administration Act much like that under consideration in the Senate can help us in improving these important aspects of our relationship with allies and friends.

The United States is not the only supplier of many key items and technologies. Important know-how is diffused among a number of countries. To have effective export controls that meet our security interests, we need the cooperation of other supplier nations. In this regard, DoD strongly favors working closely with our export control partners to foster and sustain multilateral export control regimes, to increase the effectiveness of other nations' export control systems and to encourage other countries to adopt policies and practices consonant with shared security interests. An updated statutory framework for U.S. export controls should highlight the existing multilateral non-proliferation regimes such as the Nuclear Suppliers Group, the Missile Technology Control Regime, the Australia Group and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is needed. At the same time we need a strong statutory basis for controls we share with other nations which are suppliers of comparable items and technologies but not necessarily within a "formal" regime or framework. It is particularly important, given the speed of technological change and the current security environment, that we have a strong basis in law for the support of multilateral efforts.

One of the key elements of any effective export control system is a comprehensive export control list. U.S. and multilateral control lists serve as the foundation for all national security and non-proliferation export controls. We believe that in order for control lists to be effective, there must be a clear and compelling national security, non-proliferation or foreign-policy rationale for all items on the list. In that regard, DoD participates actively in the interagency and multilateral processes that define these lists and

brings to bear the critical assessments of how items relate to military capabilities. This is an open and transparent process that affords all relevant agencies an opportunity to address their concerns and, when consensus is not reached, to escalate issues for resolution. The same is true for the system for reviewing export license applications, which is also open and transparent.

These generally applicable principles should be embodied in an Export Administration Act that is ultimately enacted. Such a process will ensure that DoD plays its proper role in an effective manner.

We also believe that an EAA must contain sufficient flexibility for the President and his senior advisors in DoD, State and Commerce to impose special controls or to maintain controls on items of particular importance to national security.

Much hard work has been done by Senators to draft an EAA that meets the needs of our Nation. I am hopeful that agreement can be reached soon on legislation that can be passed and enacted into law.